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No. 85-766

In The
Supreme Court Of The United States

OCTOBER TERM, 1985

JULIA H. TASHJIAN,
Secretary of the State of Connecticut,
Appellant,

v.

REPUBLICAN PARTY OF THE STATE OF CONNECTICUT, LOWELL P. WEICKER, JR., STEWART B. McKINNEY, NANCY L. JOHNSON and THOMAS J. D'AMORE, JR.,
Appellees.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

AMICUS CURIAE BRIEF OF WILLIAM J. CIBES, JR. (Associate Professor of Government, Connecticut College), CLYDE McKEE (Professor of Political Science, Trinity College), SARAH McCALLY MOREHOUSE (Professor of Political Science, University of Connecticut at Stamford), WAYNE R. SWANSON (Professor of Government, Connecticut College), POLITICAL SCIENTISTS, IN SUPPORT OF APPELLANT'S JURISDICTIONAL STATEMENT

TIMOTHY D. BATES
Counsel of Record
Copp, Berall and Hempstead
302 Captain's Walk
P.O. Box 670
New London, CT 06320
(203) 442-4491

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Brescia Stenographic Service
66 Connecticut Boulevard
East Hartford, CT 06108
525-6029

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STATEMENT OF INTEREST OF AMICI

Amici who have joined this brief are professors of political science at colleges located throughout the State of Connecticut. In that capacity, amici teach and study the political party system as it pertains to government, particularly in Connecticut, where they live and work. Because of this convergence, amici have a special insight into the party system and election process in Connecticut. Amici believe that the state legislature acts properly in regulating participation in primary elections so that those who associate with political parties are protected from those who attempt to intrude upon their association.

In addition, an author of this brief, William Cibes, is a state representative as well as an associate professor of political science. He thus brings a unique perspective to the issues facing the Court in this matter.[1]

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[1] The parties to this appeal have consented to the filing of this brief by amici, and the consent letters are filed with this Court.

SUMMARY OF ARGUMENT

States have a legitimate interest in preventing distortion of the views held by members of a political party by barring persons who are not affliliated with a political party from voting in a state primary election of that party. The Circuit Court of Appeals has erred in finding that the State of Connecticut must demonstrate a compelling interest in legislating such a prohibition. The standard of review, as elaborated in prior decisions of this Court, is that the state must demonstrate a compelling interest in adopting a statute which burdens the freedom of association only if the statute creates a "substantial restriction" on associational rights. In the instant case, there is no severe burden on the right to associate because the state has not prevented parties from attracting new members to its ranks, it has not interfered with the internal affairs of the party by a) forcing the party to accept members it does not desire, b) regulating purely internal, non-electoral processes of the party, or c) infringing on intrinsic aspects of a completely private organization, and the regulation of the state has not had an extra-territorial reach. Because the state's actions here accordingly have not substantially restricted the freedom of association, the state need only demonstrate the legitimacy of its purpose, which it has done. Therefore, this Court should note probable jurisdiction.

ARGUMENT

I. THE STATE HAS A LEGITIMATE INTEREST IN PROTECTING PARTY MEMBERS' ASSOCIATIONAL RIGHTS AND PRESERVING THE INTEGRITY OF THE ELECTORAL PROCESS.

A. Political Science Analysis.

The very reason a political party exists is to articulate and fight for the implementation of certain public policies. Those policies, and the principles underlying them, flow from the expressed desires of members of the political party.

At the same time, a political party, the policies it espouses, and its candidates are intertwined inextricably. Candidates personify the party, and thus the selection of a candidate is one of a political party's most important functions. As E.E. Schattschneider, perhaps the foremost analyst of American political parties in this century, has said, "The nominating process thus has become the crucial process of the party. The nature of the nominating procedure determines the nature of the party; he who can make the nomination is the owner of the party." E. Schattschneider, *Party Government* 64 (1942).

Members of political parties nominate their candidates for public office either by convention or by direct primary. In some instances, a challenge primary follows a convention; such a scenario occurs in Connecticut when a candidate receives more than twenty per cent of the votes cast by the delegates to a convention, and chooses to press his candidacy further. *See* Conn. Gen. Stat. §§ 9-400, 415.

When a party chooses its candidates for a general election at a convention, it usually also adopts a platform stating its principles. That platform, on which its candidate stands, is likely to be a model desired by the leading candidate for

the party's nomination, whose supporters — members of the political party — dominate not only the nomination process, but also the process of building the platform. S. Morehouse, *State Politics, Parties and Policy* 190 (1980).

When a candidate is chosen through the mechanism of a primary election, the only political principles defended by the party are those espoused by the winner of the primary. In the case of a challenge primary, like Connecticut's, the platform adopted by the convention will have been bypassed if the winner is other than the nominee of the convention. The political principles for which the party campaigns are accordingly defined, either in a direct primary or a challenge primary, by the voters who participate in that primary.

If those participants are the same as those who associate with each other, as members of a party, for the purpose of influencing public policy in a particular way, then no problem exists. But if others, including some who have formally associated with another party, participate in that primary, and they have candidate preferences which differ from those of the members of the party that is conducting the primary election, then the principles which the members of the party favor will have been distorted by the intruders.

It is possible, in the abstract, that independents and self-declared members of party B would choose not to participate in the primary of party A, even if they were permitted to do so. And it is also possible that, since there are either no tests for party membership, or the tests are unenforceable, members of party B could dissemble and declare themselves to be members of party A and participate in party A's primary even when they supposedly were excluded. But research has found that either possibility occurs only minimally in actual practice. Political scientists Hedlund, Watts and Hedge have observed that more than forty per cent of the voters in the open Wisconsin presidential primaries from 1968 through 1980 were not members of the party in whose primary election they voted. And the same authors observed that less than

five per cent of party identifiers voted in the other party's primary in 1976 in Florida, Pennsylvania, and California, where primaries were closed. R. Hedlund, M.W. Watts, and D.M. Hedge, "Voting in an Open Primary," 10 Am. Pol. Q. 197, 201-04 (1982).

It is also possible that the candidates and thus the political principles favored by party affiliators do not differ from the candidates and political principles favored by those who do not ally themselves with the party but vote in the primary election anyway. Recent research has demonstrated, however, that results of open primaries are in fact different from the results which would occur in those elections if they had been closed to outsiders. Professor Gary Orren has concluded that Gary Hart "owed to independents his margin of victory [over Walter Mondale in the 1984 Democratic primaries] in several states that permitted independents or Republicans to pick up Democratic ballots. These included New Hampshire and Indiana, where he ran just even with Mondale among Democrats, and Ohio, where he won the primary even though he lost the Democratic vote." G. Orren, "The Nomination Process: Vicissitudes of Candidate Selection," in *The Elections of 1984* at 27, 66-67 (M. Nelson ed. 1985) (internal footnote omitted). To the extent that Hart's victories in those states made his campaign for the nomination appear more viable for a longer period of time, the expressed preferences of those voters unaffiliated with the Democratic party weakened the candidacy of the contender favored by those who were members of the association.

Similar distortions occurred in the 1972 Democratic presidential primaries in Wisconsin and Michigan, both of which were open to voters other than members of the Democratic party. In both states, the candidate preferences of non-Democrats differed from those of Democrats: in Wisconsin, Hubert Humphrey would have narrowly defeated George McGovern if the contest had not been open to Republicans and independents. With the votes of these intruders, however, McGovern won convincingly: "the victory

reinvigorated his slumping campaign." Although the order of finish of the candidates would not have been altered in the Michigan open primary, Humphrey's share of the delegates chosen would have increased if the participants had been limited to Democrats. Political scientist James Lengle concludes that, in an open primary, "the effect of partisan-related candidate preferences is to distort both the voice of party members and the strength of the party's presidential contenders." J. Lengle, *Representation and Presidential Primaries: The Democratic Party in the Post-Reform Era* 100, *see generally* 98–103 (1981). *See also* D. Adamany, "Cross-Over Voting and the Democratic Party's Reform Rules," 70 Am. Pol. Sci. Rev. 536 (1976), cited extensively by this Court in *Democratic Party of the United States v. Wisconsin ex rel. LaFollette*, 450 U.S. 107 (1981).[2]

One may praise or condemn the results in these particular primary elections. The point is that those persons who associated with the party for the purpose of expressing their political views had their preferences as to candidates — and the policies consequently espoused by their party — altered or distorted because of interlopers in their association. Those intruders may not have bent on "raiding"; they may have voted in that primary only because of the absence of an exciting race in the other party's primary. (Lengle did not believe that there was an organized Republican raid in the open Democratic primaries in either Wisconsin or Michigan in 1972. Lengle, *supra* at 102.) But their participation in the primary election on the same terms as *bona fide* members of the party nevertheless distorted the very expression of views for which the members entered into that association. As David E. Price concludes, "Open primaries dilute the impact of the parties' core constituencies." D. Price, *Bringing Back the Parties* 132 (1984).

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[2] Adamany's data, which indicated greater support for McGovern than he actually received, were, as the author states, somewhat contaminated by a halo effect, inasmuch as voters were not sampled until after the general election. Adamany, *supra* at 537.

The Committee on Political Parties of the American Political Science Association (APSA) anticipated these empirical findings when it made its recommendations in 1950. "The meaning of [party] membership itself suggests that those who identify themselves with the group have something in common which they do not share with those outside it." Committee on Political Parties, *Toward a More Responsible Two-Party System* 66 (American Political Science Association, 1950). The APSA Committee accordingly recommended the adoption of the closed primary, because "it tends to support the concept of the party as an association of like-minded people. On the other hand, *the open primary tends to destroy the concept of membership as the basis of party organization.*" *Id.* at 71 (emphasis in original).

Political scientists have observed that closed primary elections produce other benefits for the party system as well. The lists of party enrollees generated by registration prior to a closed primary are "invaluable tools for the parties as they undertake voter registration and get-out-the-vote drives and other efforts at communication and organization." Price, *supra* at 132. Because control of the nomination is in the hands of the same people who choose the leaders of the party organization, "candidates and officeholders have stronger incentives to work with party organizations and to support party positions." *Id.* Recruitment of candidates by party leaders may be facilitated because there is a greater assurance that the carefully chosen recruit will win the primary. Morehouse, *supra* at 177.

In addition, as V.O. Key observes, "the open primary at times makes difficult the maintenance of orientations differentiating the two parties and probably handicaps the lesser party in those jurisdictions in which one party holds a substantial advantage. The voters of the lesser party may find it more attractive to exercise a balance of power in the primary of the major party than to engage in the troublesome task of building up their own party." V.O. Key, *Politics, Parties, & Pressure Groups* 392 (5th ed., 1964). Moreover, the open

primary may reduce the quality of debate about state policy issues. The need for candidates to make themselves attractive to the entire electorate at the primary stage may force them to de-emphasize the formulation of differences in policy between the parties and appeal to voters in what has become "the first round of the general election" on the basis of personality, image and "freewheeling candidate and issue appeals based outside the parties." Price, *supra* at 132.

Given the array of benefits of closed primaries and disadvantages of open primaries for the party system in general, together with the fact that in a closed primary the views of the members of a political party are not distorted by the participation of non-members, political scientists have recommended that "party leaders and legislators in states with open-primary and same-day systems would do well to examine their debilitating effects on parties and to consider corrective action." Price, *supra* at 132.[3] As Sarah McCally Morehouse concludes her leading text on state politics, "It is certainly not too much to ask that those who help select the party nominee in a primary should be party members with more than a passing attachment to the party. . . . State laws should restrict voting in primaries to those who have registered with a party. . . ." S. Morehouse, *supra* at 488.

States need not follow the advice of the professors, of course, but should a state legislature conclude that it desires to adopt the public policy of strengthening the party system within its borders, there are certainly valid reasons to support the legislature's conclusion. The state would surely have at least a legitimate interest in fostering the party system, in preventing the dilution and/or alteration of the views of the members of political parties, and in protecting the associations formed to espouse the adoption of certain principles of public policy from intrusion by those preferring different policies and different candidates.

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[3] "Same-day" registration systems require no party affiliation in advance. Voters declare their preference for parties at the polls.

B. Judicial Analysis.

Courts have recognized that states have this "legitimate interest in protecting party members' associational rights, by legislating to protect the party 'from intrusion by those with adverse political principles,' " as a three-judge District Court wrote in 1976 concerning the statute here at issue. *Nader v. Schaffer,* 417 F. Supp. 837, 845 (D. Conn. 1976), *aff'd mem.,* 426 U.S. 989 (1976), quoting *Ray v. Blair,* 343 U.S. 214, 221-22 (1952). The *Nader* court continued:

> In addition to protecting the associational rights of party members, a state has a more general, but equally legitimate, interest in protecting the overall integrity of the historical electoral process. This includes preserving parties as viable and identifiable interest groups; insuring that the results of primary elections, in a broad sense, accurately reflect the voting of party members. Parties should be able to avoid primary election outcomes which will confuse or mislead the general electorate to the extent it relies on party labels as representative of certain ideologies, and preventing fraudulent and deceptive conduct which mars the nominating process." *Nader v. Schaffer, supra* at 845.

This Court has reached a similar conclusion concerning the legitimacy of establishing a cutoff point for registration or party enrollment in New York: the purpose of New York's statute was to "inhibit party 'raiding,' whereby voters in sympathy with one party designate themselves as voters of another party so as to influence or determine the results of the other party's primary." *Rosario v. Rockefeller,* 410 U.S. 752, 760 (1973). This Court then said, "It is clear that preservation of the integrity of the electoral process is a legitimate and valid state goal." *Rosario, supra* at 761.

Certainly, this Court has recognized that protection of party members from intrusion by others is in general a necessary concomitant of the freedom of association. In *Democratic Party*, this Court stated — there in reference to a political party's own rules which excluded non-party members from presidential primaries — "[T]he freedom to associate for the 'common advancement of political beliefs' necessarily presupposes the freedom to identify the people who constitute the association, and to *limit* the association to those people only." 450 U.S. 107, 122 (1981) (internal citation omitted and emphasis added). This Court then cited with approval Professor Tribe's comment that "[f]reedom of association would prove an empty guarantee if associations could not limit control over their decisions to those who share the interests and persuasions that underlie the association's being." L. Tribe, *American Constitutional Law* 791 (1978), quoted in *Democratic Party*, *supra* at 122 n.22. The Court added that it had recognized on several occasions "that the inclusion of persons unaffiliated with a political party may seriously distort its collective decisions — thus impairing the party's essential functions." *Id.* at 122.

II. THE CIRCUIT COURT HAS MISCONSTRUED PRIOR RULINGS OF THIS COURT.

Appellees' claim in this case is that the State of Connecticut, in pursuing the goal of protecting the members of a political party from intrusion by others, has substantially infringed on the right of association of Connecticut Republican Party members, who have decided to permit voters unaffiliated with either party to vote in some of its primary elections. The Second Circuit Court of Appeals has subscribed to the view that the statute at issue, Conn. Gen. Stat. § 9-431, "substantially interferes with the Republican Party's first amendment right to define its associational boundaries, determine the content of its message, and engage in effective political association," and has stated further that such a statute "may be upheld only if it is necessary to advance compelling state interests and only if it is tailored to advance those interests in the least restrictive manner." J.S. App. at 112.

Amici respectfully contend, however, that the lower court has fundamentally misconstrued previous rulings of this Court in reaching its conclusion, while brushing aside the state interests present here.

A. The Standard Of Review Employed By The Circuit Court Was Misapplied.

Specifically, the court below has misapplied the standards clearly and undeviatingly expressed by this Court in a long line of cases dealing with the power of a state to regulate various activities of a political party. A judicial inquiry must first determine if a state law imposes "substantial burdens on the freedom to associate" or if only "minor restrictions on associational activities" are imposed. Note, "It's My Party and I'll Cry If I Want To: State Intrusions Upon the Associational Freedoms of Political Parties — *Democratic Party of the United States v. Wisconsin ex rel. LaFollette*," 1983 Wis. L. Rev. 211, 220. If, as in *Democratic Party*, the Court finds a "substantial intrusion into the associational freedom of members of the National Party," *Democratic Party*, *supra* at 126, the Court must then consider "whether the State has compelling interests that will justify the imposition of its will" on the party. *Id.* at 124.[4]

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[4] In *Kusper v. Pontikes*, 414 U.S. 51 (1973), this Court first considered whether the statute there at issue "substantially restrict[ed]" the voter's right to change his affiliation, *id.* at 57, or was a "significant encroachment upon associational freedom." *Id.* at 58. It then proceeded to determine the extent of Illinois' interest, stating that the interference "could not be justified upon a mere showing of a legitimate state interest." *Id.* at 58. In *Cousins v. Wigoda*, 419 U.S. 477 (1975), this Court also apparently first considered the petitioners' contention that the injunction there at issue was a " 'significant interference' with protected rights of political association." *Id.* at 488. Only then did it proceed to determine if "Illinois had a compelling interest." *Id.* at 489. Also apposite is *Storer v. Brown*, 415 U.S. 724 (1974), dealing with a California dis-affiliation requirement for candidates: citing *Williams v. Rhodes*, 393 U.S. 23 (1968), this Court stated the requirement that there first must be a finding that the statute "severely burdened the right to associate for political purposes;" if so, then the discriminations "had to be justified by compelling state interests." *Storer*, *supra* at 729.

If, on the other hand, as in *Marchioro v. Chaney*, 442 U.S. 191 (1979), this Court finds that "there can be no complaint that the party's right to govern itself has been substantially burdened by statute," *id.* at 199, this Court then must only determine if the state's interest is "legitimate." *Id.* at 196. The *Marchioro* court specifically distinguished *Cousins:* "In *Cousins*, unlike this case, there was a substantial burden on associational freedoms. This fact alone distinguishes the two cases, and renders *Cousins* inapposite." *Id.* at 199 n.15. Moreover, it summarized with approval the ruling of the Washington Supreme Court: "The state court reasoned that although ' "substantial burdens" ' on the right to associate for political purposes are invalid unless ' "essential to serve a compelling state interest," ' these appellants failed to establish that this statute had imposed any such burden on their attempts to achieve the objectives of the Democratic Party. Since this initial burden had not been met, the court upheld the constitutionality of the challenged statute." *Id.* at 195.

The standards in these cases do not alter "the analytic paradigm employed in determining the constitutionality of state impingements upon party autonomy" which one leading commentator suggested in 1978: "mild restrictions on political parties must relate rationally to some legitimate state interest; if a state rule substantially erodes the freedom of association of party members, however, the rule will be upheld only if it is shown necessary to serve a compelling state interest." L. Tribe, *American Constitutional Law* 786 (1978).

B. The State Has Not Substantially Burdened The Appellees' Associational Rights.

Employing the correct standard in the instant case, it may be seen that, as in *Marchioro v. Chaney*, the "initial burden," *supra* at 195, of demonstrating that the state has imposed a substantial restriction on the right of association has not been met.

1. The Party's associational right to attract new members is not substantially burdened.

Connecticut has not substantially interfered with the right of members of the Republican Party to associate with whomever they desire to attract. Unlike the requirement which locked a voter into a pre-existing party affiliation, declared unconstitutional in *Kusper v. Pontikes*, 414 U.S. 51 (1973), and even unlike the delayed-enrollment scheme upheld in *Rosario v. Rockefeller, supra*, Connecticut specifically permits Connecticut Republicans to continue to attract party members by permitting them to affiliate with the party until noon of the business day before a primary election. Conn. Gen. Stat., § 9-56. There is no 23-month waiting period before affiliation takes effect, which essentially "absolutely preclude[d]" the appellee in *Kusper* from voting in her chosen party's primary, and thus absolutely barred members of that party from attracting her support during that period. *Kusper, supra* at 58. The statute here "does not freeze the status quo," *Anderson v. Celebrezze*, 460 U.S. 780, 806 at 817 (1983) (Rehnquist, with White, Powell, and O'Connor, dissenting) which all Justices of this Court agreed was impermissible in the context of filing deadlines on Presidential candidates imposed by Ohio. *Id.* at 794.[5]

2. The state is not controlling the internal affairs of the Party.

Connecticut has not substantially interfered with the internal organization or affairs of the group which has associated to pursue political ends.

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[5] Professor Tribe concludes, after an analysis of *Kusper, supra*, and *Rosario, supra*, that "contemporaneous affiliation," a requirement essentially similar to Connecticut's one-day waiting period, is justifiable: "Absent a willingness to profess such affiliation, it would be tenuous to assert that substantial associational rights were being abridged; without a commonality of interest, there is little association to abridge." Tribe, *supra* at 793.

a. The state is not forcing the Party to accept members who may distort its views.

Unlike the Illinois state law found to be superseded by the decision of the Democratic national convention in *Cousins v. Wigoda, supra*, unlike the Wisconsin rule which bound the Wisconsin delegates to the national party convention to honor the results of the Wisconsin open primary in voting for presidential candidates, declared void in *Democratic Party, supra*, and even unlike certain other government actions referred to in *Roberts v. Jaycees,* U.S. , 104 S.Ct. 3244 (1984), as infringing on the right to associate for expressive purposes, the Connecticut statute does not intrude "into the internal structure or affairs of an association" in that it does *not* "force[ ] the group to accept members it does not desire." It does *not* "impair the ability of the original members to express only those views that brought them together." *Roberts v. Jaycees, supra* at 3252. Like the Minnesota Human Rights Act upheld by the Court in *Roberts*, the statute "requires no change in . . . creed . . . and it imposes no restrictions on the organization's ability to exclude individuals with ideologies or philosophies different from those of existing members." *Roberts, supra* at 3254. On the contrary, the Connecticut statute here at issue, Conn. Gen. Stat. § 9-431, seeks to *protect* the associational rights of members of the Republican Party from interlopers.

b. The state is not hindering the Party's internal, non-electoral decision-making process.

Unlike the actions of Illinois in *Cousins v. Wigoda, supra*, which sought to override the internal rules of the Democratic Party for the selection of delegates to be seated at its national convention, and unlike the Wisconsin statute in *Democratic Party v. Wisconsin, supra*, which bound by state law votes of delegates to the national convention, the Connecticut

statute here in question does not deal with the *internal* processes of the Republican Party, but with a primary election that determines which candidate will be granted access to the general election ballot. *Marchioro v. Chaney, supra,* clearly distinguishes " 'purely internal party decisions,' " *id.* at 197, from the "critical role played by political parties in the process of selecting and electing candidates for state and national office." *Id.* at 196. Statutes which regulate "the orderly participation of the political party in the electoral process," *id.* at 197, are supportable. "The State's interest in ensuring that this process is conducted in a fair and orderly fashion is unquestionably legitimate; 'as a practical matter, there must be a substantial regulation of elections if they are to be fair and honest and if some sort of order, rather than chaos, is to accompany the democratic processes.' " *Id.* at 196, quoting *Storer v. Brown,* 415 U.S. 724, 730.[6]

c. The Party is not a purely private organization.

Unlike the various state actions which sought disclosure of the membership lists of private organizations, such as those struck down in *NAACP v. Alabama ex rel. Patterson,* 357 U.S. 449 (1958) and *Bates v. City of Little Rock,* 361 U.S. 516 (1960), and unlike other statutes considered in cases cited in *Roberts v. Jaycees, supra* at 3250-52, the Connecticut statute here does not regulate a purely private organization, the members of which have an "intrinsic" right to "enter into and maintain certain intimate human relationships [which] must be secured against undue intrusion by the State because of the role of such relationships in safeguarding the individual freedom that is central to our constitutional scheme." *Id.* at 3249. The Republican Party is not distinguished by its "relative

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[6] As the Fourth Circuit Court of Appeals observed in another context in *Rice v. Elmore,* "the fundamental error in [South Carolina's] position consists in the premise that a political party is a mere private aggregation of individuals, like a country club, and that the primary is a mere piece of party machinery." 165 F. 2d. 387, 389 (4th Cir. 1947) (footnote omitted).

smallness, a high degree of selectivity in decisions to begin and maintain the affiliation, and seclusion from others in critical aspects of the relationship." *Id.* at 3250. Indeed, the names of those affiliated with the Republican Party or any other political party are open to anyone for public inspection, and are disseminated widely so that the affiliated voters may be targeted to receive information. Conn. Gen. Stat. § 9-55. Moreover, although Connecticut statutes provide that party officials may remove a person from the list of party members for lack of good-faith party affiliation, Conn. Gen. Stat. § 9-60, there has been no showing in this case that the procedure has ever been used, or that the Party "employs any criteria for judging applicants for membership." *Roberts, supra* at 3251.

3. The National Party's rules and decisions are not regulated by the state.

Unlike the injunction overturned in *Cousins, supra*, unlike the statute struck down in *Democratic Party, supra*, and unlike the early filing deadline for Presidential candidates declared void in *Celebrezze, supra*, the Connecticut statute does not have extra-territorial application. It does *not* "seriously undercut or indeed destroy the effectiveness of the National Party Convention" which "serves the pervasive national interest in the selection of candidates for national office," which "national interest is greater than any interest of an individual State." *Cousins v. Wigoda, supra* at 490. Here no state restriction is imposed on a "nationwide electoral process," which the "State has a less important interest in regulating . . . than statewide or local elections, because the outcome of the former will be largely determined by voters beyond the State's boundaries." *Anderson v. Celebrezze, supra* at 795.

C. Connecticut Has A Legitimate Interest In Preventing Distortion Of The Electoral Process.

Accordingly, although states which adopted statutes or regulations possessing any of the foregoing attributes might be required to demonstrate a compelling state interest, Connecticut need only show that it had a legitimate and valid state interest in adopting the statute here in question. On the authority of prior cases, it can accomplish — and indeed has accomplished — that task.

As this Court summarized in *Anderson v. Celebrezze, supra*, "the State's important regulatory interests are generally sufficient to justify reasonable, nondiscriminatory restrictions," *id.* at 788, such as those "that protect the integrity and reliability of the electoral process itself." *Id.* at 788 n.9. Specifically, a state "has the right to prevent distortion of the electoral process by the device of 'party raiding.' " *Id. See also Kusper, supra* at 61, in which the Court refers to the "legitimate interest of Illinois in preventing 'raiding,' " even though the particular method chosen did not pass constitutional muster.

This Court specifically described "raiding" in *Rosario, supra*, as the practice "whereby voters in sympathy with one party" — not just members — "designate themselves as voters of another party so as to influence or determine the results of the other party's primary." *Id.* at 760.

Distortion of the electoral process can occur, as observed by amici in this brief, *supra* at pages 4-6, when voters unaffiliated with either party decide to cast ballots in a party primary. Whether impelled by a deliberate desire to seek the nomination of the candidate least likely to win the general election, or simply attracted by an exciting campaign, independent or unaffiliated voters can dilute the preferences of party members, an outcome which the state has a legitimate interest in preventing.

CONCLUSION

This Court has never expressly ruled on the question of whether states may regulate the conduct of primary elections by state parties which determine the party's nominee in a state election. The majority in *Cousins* emphasized that "the only question that we decide today," *id.* at 483 n.4, is "whether the Appellate Court was correct in according primacy to state law over the National Party's rules in the determination of the qualifications and eligibility of delegates to the Party's National Convention," *id.* at 483, a view with which Justice Powell agreed: "state regulation of state primaries or conventions for state offices raises different considerations requiring a wholly different balance." *Id.* at 496, 497 n.* (Powell, J., concurring and dissenting). The Circuit Court in the instant case, however, has not recognized these "different considerations," and has misconstrued an entire line of decisions of this Court.

Therefore, for the reasons stated above, this Court should note probable jurisdiction.

Respectfully submitted,

TIMOTHY D. BATES
Counsel of Record

COPP, BERALL and HEMPSTEAD
302 Captain's Walk
P.O. Box 670
New London, CT 06320
(203) 442-4491